

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JUL 27 1998

In the Matter of)
)
McLEODUSA TELECOMMUNICATIONS) CC Docket No. 98-84
SERVICES, INC.)
)
Petition for Preemption of Nebraska)
Public Service Commission Decision)
Permitting Withdrawal of Centrex Plus)
Service by U S WEST Communications,)
Inc.)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") hereby submits this reply in the above-captioned proceeding.¹ McLeodUSA Telecommunications Services, Inc. ("McLeod") requests that the Federal Communications Commission ("Commission") issue an order preempting the Nebraska Public Service Commission's ("PSC") decision to permit U S WEST to withdraw its Centrex Plus product.² McLeod's request is utterly unsupported by any facts which would warrant action of this nature. Instead, McLeod simply requests that this Commission second-guess the actions of the Nebraska PSC and, presumably, the Nebraska Supreme Court. The thoughtful comments of the Nebraska Public Service Commission in this docket set forth the accurate position of that Commission and its proper interpretation of the

¹ Public Notice, Pleading Cycle Established For Comments On McLeodUSA Telecommunications Services, Inc. Petition For Preemption, Declaratory Ruling, And Injunctive Relief, DA 98-1099, rel. June 10, 1998. Petition for Preemption, Declaratory Ruling, and Injunctive Relief, filed May 29, 1998 ("Petition").

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appropriate laws.

Nevertheless, a variety of commenting parties have supported the McLeod Petition.³ The basic position of these parties appears to be that they are entitled to anything they want from an incumbent local exchange carrier ("LEC"), and such normal considerations of law, property, or even the Constitution have little bearing in determining whether these commentators should be given complete satiation by the federal government. Indeed, even such traditional advocacy goals as factual accuracy seem to have taken a back seat to the fervor with which these parties press their position that the property of an incumbent LEC is not really private property at all, but a public asset to be divided among these parties.

An excellent example of what can most charitably be described as overzealous advocacy is presented in the comments of MCI Telecommunications Corporation ("MCI"). MCI claims:

The Nebraska PSC's approval of US West's withdrawal of Centrex service has produced the same result as an express prohibition on provisions of telecommunications services in the Nebraska market. Due solely to the withdrawal, customers in Nebraska do not have the benefit of competitive alternatives for local service, unlike customers in their neighboring states have. For McLeod, for example, reselling US West's Centrex service was the primary platform for delivering local exchange service in Nebraska.⁴

The problem with this statement is that MCI has misrepresented practically every material fact.

² Nebraska PSC Opinions and Findings rel. Nov. 25, 1996.

³ Comments and oppositions filed July 10, 1998.

⁴ MCI at 3.

First, contrary to MCI's assertion, McLeod never resold Centrex in Nebraska -- to anyone. McLeod was not certified to provide service in Nebraska until after the U S WEST Centrex Plus service had been withdrawn. MCI's claim that "[f]or McLeod. . . reselling US West's Centrex was the primary platform for delivering local exchange service in Nebraska" has no basis in reality. MCI apparently just made it up. In fact, while U S WEST is of the firm belief that extremely serious legal and constitutional issues would be raised if the Commission sought to require that an incumbent LEC continue offering an unprofitable intrastate service solely so competitors could resell that service, it really turns out that even this highly troublesome factual situation is not at issue in the McLeod case. McLeod requests that the Commission intervene in the Nebraska PSC proceeding on McLeod's assertion that it might want to resell Nebraska Centrex in the future. McLeod has never resold Centrex in Nebraska in the past.

Similarly, MCI's allegation that "[d]ue solely to the withdrawal, customers in Nebraska do not have the benefit of competitive alternatives for local service. . ." is both preposterous on its face and factually false. The notion that the competitive market in Nebraska is such that it is totally dependent on resold Centrex for its very survival -- which MCI unashamedly alleges, is simply ridiculous. Moreover, perhaps due in part to the fact that the State of Nebraska is not hoodwinked by false and exaggerated allegations by parties such as MCI, competition in Nebraska is taking hold and is beginning to flourish. It was recently noted in the Omaha World Herald that Nebraska is a leader in the introduction of local competition in local exchange markets, quite contrary to MCI's allegation that, due "solely" to the

unavailability of Centrex service, there is no local competition at all. The Omaha Herald reported:

Already, 40 companies are lined up in Nebraska to compete with existing local-service providers. Six have finished all the procedural steps necessary to offer local telephone service. They are AT&T; Aliant Midwest Inc.; Cox Nebraska Telecom II; LLC, TCG Omaha; FirsTel Inc. (Advanced Communications); and Nebraska Technology and Telecommunications Inc. Five of the six offer local business or residential service in pockets of Nebraska.⁵

U S WEST has a total of seventeen Commission-approved agreements within Nebraska, including two approved agreements with resellers and two agreements covering the exchange of Extended Area Service ("EAS") traffic. U S WEST's interconnection agreements with Aliant, Cox, TEC, Sprint, AT&T, and Nebraska Technology and Telecommunications, Inc. all contain resale provisions. In addition, agreements solely for the resale of U S WEST services have been negotiated with Max-Tel Communications, Inc. and FirsTel, Inc. Another agreement with a reseller, Comm South Companies, Inc. was recently filed with the Commission. There is simply no indication at all that competition is being impeded in Nebraska in any way.

One additional point deserves mention. A number of commentators claim that the Public Utility Commission of Texas case⁶ provides precedent for the action

⁵ "Nebraska a Leader in Local Phone-Service Choices," Omaha World Herald, July 19, 1998, p. 1.

⁶ In the Matter of The Public Utility Commission of Texas, Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, Memorandum Opinion and Order, 13 FCC Rcd. 3460 (1997) ("Texas Order").

which McLeod demands here.⁷ The relevant part of the Texas decision involved a Southwestern Bell (“SWB”) Centrex tariff provision which provided that Centrex service “may only be made available to subscribers in a continuous property area. . . .”⁸ This tariff provision was found to prevent resellers of Centrex service from providing a viable resale service, while at the same time SWB continued to offer and market the service. No service withdrawal was involved -- certainly not service withdrawal at a time when no resale requests had been made, as is the case here. The Texas case simply involved what were found to be tantamount to unreasonable resale restrictions on an existing and ongoing Centrex service. On the other hand, this Commission has already concluded that withdrawal of a services is not an unreasonable restriction on resale.⁹ There is no relationship between the Texas case and the instant McLeod Petition.

In short, if anything, the comments filed supporting McLeod in this docket document how far beyond the proper bounds of the law the McLeod Petition is. U S WEST has chosen for completely legitimate business reasons to withdraw its Centrex Plus product, a local exchange service. The Nebraska PSC concurred that this withdrawal is in the public interest and is permissible under the applicable law. This decision is pending before the Nebraska Supreme Court. Based on the

⁷ MCI at 3-4; WorldCom, Inc. at 2; Frontier TeleManagement, Inc. and Advanced Telecommunications, Inc. at 3-6; Competitive Telecommunications Association at 3.

⁸ Texas Order, 13 FCC Rcd. at 3558-59 ¶ 214.

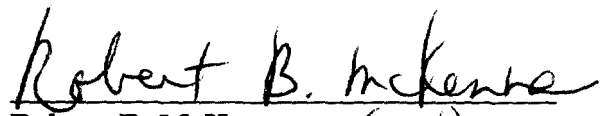
⁹ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd. 15499, 15977-78 ¶ 968 (1996).

assertion that it might want to use Centrex for resale purposes in the future, McLeod has requested that this Commission preempt the decision of the Nebraska PSC and, presumably, the Nebraska Supreme Court and order U S WEST to make Centrex Plus service available to McLeod for resale. In support of this position, commentators have alleged that they are entitled to practically any aspect of the service of the property of an incumbent LEC as a matter of government largesse, and at least one, MCI, has simply made up the factual basis for its support. The McLeod Petition is frivolous, and should be dismissed.

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July 27, 1998

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 27th day of July, 1998, I have caused a copy of the foregoing **REPLY OF U S WEST COMMUNICATIONS, INC.** to be served, via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.

A handwritten signature in cursive script that reads "Rebecca Ward". The signature is written in black ink and is positioned above a horizontal line.

Rebecca Ward

*Served via hand delivery

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